Civil Writ Pet. No.5507/1999
Union of India & Ors.
Versus
Ramesh Chandra Chauhan-I & Anr.
**

Date of Judgment ::: 31/08/06

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Hon'ble the Chief Justice Shri S.N.Jha
Hon'ble Mr. Justice Ajay Rastogi

Shri KamlakarSharma, for the petitioners
Shri Mukesh Agrawal, for respondent No.1.

(Per Ajay Rastogi, J.) (Oral)

Instant petition has been filed against order dt.05/04/99 (Ann.5) passed by Central Administrative Tribunal ("*Tribunal*") whereby petitioner was directed to consider case of respondent No.1 for promotion under one time bound promotion scheme ("***OTBP Scheme***") against point No.20 as per 40 points model roster for filling up posts otherwise than by open competition under that scheme; and so also against order dt.18/05/99 (Ann.10) whereby review application filed by petitioner too was dismissed.

Respondent No.1 (appellant before Tribunal) who is member of Schedule Caste category was initially appointed as Time Scale Clerk (redesignated as Postal Assistant) on 27/10/1981. A scheme was introduced by petitioner in the year 1983 for placement in next higher grade on completion of 16 years of service vide Circular dt.17/12/83 (Ann.1) made effective from 30/11/83.

Reservation for SC/ST communities was introduced by the petitioner under 40 point roster in the matter of placement into higher grade under OTBP scheme for employees having atleast 10 years of

service in cases of SC/ST communities to the extent of short fall vide Circular dt.04/08/89 (Ann.2). Respondent No.1 completed 10 years of service on 27/10/91 and became entitled for consideration for promotion under OTBP scheme for placement in higher grade. According to roster point, respondent No.1 was to be considered against point No.20 reserved for Scheduled Caste candidate as referred to in Model Roster (1) under 40 points roster scheme updated as on 07/09/93 (Ann.7).

Since case of respondent No.1 was not considered right from 1991 for placement into higher grade, he filed original application before learned Tribunal seeking direction for his promotion under OTBP Scheme in terms of circular issued by the petitioner. Petitioner filed reply before learned Tribunal and submitted that under departmental rule, promotion under OTBP scheme can be extended initially on completion of 16 years service and if sufficient members of SC/ST employees having 16 years of service do not become available for promotion against the points reserved for them in 40 points roster to the extent of short fall, then SC/ST employees can be given promotion even if they do not have 16 years of service but subject to the condition of their having rendered minimum period of service. It was further averred that as per 40 point roster maintained in Beawar office, against point Nos.8 & 14 respectively Sarva Shri R.K.Parihar and P.L.Mehar who were members of Scheduled Caste were promoted under the Scheme and respondent would be considered for promotion only on his turn and as per Model roster (Ann.4) under 40 point roster scheme meant for promotion purpose

against point No.22 and not against No.20 of which reference has been made in original application.

The learned Tribunal after taking into consideration material on record disposed of original application vide order dt.05/04/99 (Ann.5) with the direction to consider respondent No.1 under OTBP scheme against point No.20 as per 40 points roster (Ann.7). Against said order (Ann.5) the petitioner filed review application pointing out that model roster, reference of which has been made, does not apply for promotion under the Scheme and as per model roster applicable in instant case, point no.22 comes against which candidature of respondent can be considered as reserved for SC community and further objection was raised that pendente original application, candidature of respondent No.1 was considered by departmental promotion committee but his service record was not found to be satisfactory for promotion and decision holding him unsuitable was communicated vide order dt.13/10/97 (Ann.9) as such he cannot now be considered even under OTBP scheme. But review application was also rejected by learned Tribunal vide order dt.18/05/99 (Ann.10). Hence this petition.

Counsel for petitioner submits that 40 point model roster as made applicable by learned Tribunal directing the petitioner to consider candidature of respondent no.1 against point No.20 does not at apply for promotion under OTBP scheme and according to him, in respect of promotion under the Scheme, only Appendix 5 - model roster (1) (40 points) (Ann.R.1, to OA) is appropriate to be applied where point NO.22 is reserved for S.C., and Counsel submits that very

premises on which learned Tribunal has proceeded while holding to grant promotion against point No.20 reserved for S.C., is an apparent error committed in passing ordered impugned. Counsel also submits that after passing of the order impugned, immediately review application was filed inter-alia pointing out that both model rosters were placed on record only to show that Appendix 6 – model roster (Ann.7) of which learned Tribunal has taken note, relates to direct recruitment on all India basis otherwise than by open competition whereas Appendix 5 – model roster (Ann.R.1 to OA) applies in instant case in relation to posts to be filled by promotion, according to which point no.22 is reserved for scheduled Caste and that apart, it was pointed out that pendente original application, respondent No.1 was considered for promotion but because of his unsatisfactory record, was not found to be suitable and despite intimation sent to respondent No.1, he failed to question his unsuitability recorded by DPC – in absence whereof he was not entitled even to be considered against point no.22 under 40 point roster (Appendix 6)(Ann.R.1) despite this fact being brought to the notice of Tribunal, the same was not considered only on premise that these facts were not made available as part of pleadings in original application ; as such reference of subsequent facts could not have been taken note of while entertaining review application.

Counsel further submits that learned Tribunal committed an error apparent on the face of record in rejecting review application despite un-controverted facts placed on record.

Per contra, Counsel for respondent No.1

submits that Appendix 6 – 40 points model roster (Ann.7) of which reference has been made by Tribunal takes note of point reserved for SC/ST in relation to recruitment made by open competition as well as by promotion; as such learned Tribunal has not committed any error in taking note of 40 points model roster relating to promotion under recruitment by open competition. Counsel further submits that even if contentions of petitioner is accepted, yet respondent No.1 was to be considered for promotion at least against point No.22 in terms of Appendix 5 - 40 points model roster (Ann.R.1), to which also he was not considered and that was sole contention advance by petitioner in reply to O.A. before learned Tribunal. Counsel further submits that so far as communication dt.13/10/97 (Ann.9) with regard to unsuitability is concerned, it was in relation to his regular promotion on next higher post in the hierarchy but his candidature was never considered under OTBP scheme which was made available to employees on completion of their 16 & 10 years of service in case of employees belonging to SC/ST like respondent No.1 and no adversity of any nature was ever communicated or has been placed on record to show that respondent No.1 was unfit to hold post in higher grade under OTBP scheme – in absence whereof communication dt.13/10/97 (Ann.9) is of no legal significance and in no manner can deprive him of his seeking promotion in next higher grade under OTBP scheme and learned Tribunal has not committed any error in directing the petitioner to consider him under the impugned scheme.

We have considered rival contentions of

Counsel for the parties and with their assistance, examined material on record. From a bare reading of OTBP scheme introduced by the petitioners vide their Circular dt.17/12/83 (Ann.1) it appears that this has been introduced with an object to remove stagnation of employees who have completed more than 16 or 10 years of service, as the case may be, yet have not been considered for their regular promotion on higher post and to meet out that stagnation, OTBP scheme was introduced at least to grant higher scale of pay to such employees having completed 16 years of service and 10 years of service in case of employees belonging to SC/ST community, and while granting such higher scale of pay, their fitness has to be considered and not their suitability to hold the post.

While considering suitability of incumbent for regular promotion there is always an element of merit which may be necessarily required for efficiency in administration but in instant case it is fitness of incumbent which is to be adjudged. No material has been placed on record which may hold respondent No.1 to be unfit for grant of higher grade on completion of 10 years of service. In such circumstances, what has been communicated to respondent no.1 vide letter dt.13/10/97 (Ann.9) holding that his service record was not found to be satisfactory for promotion, will be of no legal significance and will in no manner deprive him for grant of higher grade under OTBP Scheme. We find no illegality committed by learned Tribunal in directing the petitioner to consider the respondent No.1 for higher grade under OTBP scheme after adjudging his

fitness to hold the post.

So far as next contention raised by the petitioner with regard to applicability of 40 points model roster is concerned, we find substance in the submission made by Counsel for petitioner. Appendix 6 - 40 points model roster (Ann.R.1) (pertaining to reservation of 15% for S.Cs and 7.5% for S.Ts) contains a note that a separate roster on this pattern will be maintained for posts filled by promotion to which reservation orders apply. According to this model roster, point No.22 indisputable is reserved for candidates of Scheduled caste, whereas Appendix 5 - 40 points model roster (Ann.7) of which reference has been made by Tribunal, provides reservation of 16.2/3% for Scheduled Castes and 7.5% for scheduled Tribes and it applies for posts to be filled by direct recruitment on All India Basis otherwise than by open competition.

We find that learned Tribunal has committed an error apparent in directing petitioner to consider respondent no.1 under OTBP scheme against point No.20. In our considered opinion, his entitlement for consideration was not against point No.20 but against point No.22 in terms of 40 points model roster - Appendix 5 (Ann.R.1 to OA) and this fact remained undisputed from material on record that the points reserved for Scheduled Caste candidate are No.8 & 14 against which Sarva Shri R.K.Parihar and P.L.Mehar who were members of Scheduled Caste were promoted under the OTBP Scheme w.e.f. 07/07/76 and 12/01/80 respectively and were senior to him and no person senior to him was left out and consideration of respondent no.1 comes against point No.22 under

Appendix 5 – 40 points model roster (Ann.R.1).

Consequently, this writ petition is partly allowed. The petitioners are directed to consider case of respondent No.1 for promotion under OTBP scheme against point No.22 for filling up the post in terms of Appendix 5 – 40 points model roster (Ann.R.1) and to this extent, impugned orders dt.05/04/99 (Ann.5) and dt.18/05/99 (Ann.10) of the learned Tribunal stand modified with the above directions. The petitioners should ensure compliance of this order within three months. No costs.

(Ajay Rastogi), J. **(S.N.Jha), CJ.**

K.Khatri/5507CWP1999db.